

MEMORIAL

OF

A CONVENTION OF CITIZENS HOLDING CLAIMS ON THE
GOVERNMENT, HELD AT WASHINGTON CITY,

PRAYING

The adoption of measures by Congress to facilitate the adjustment of private claims.

JUNE 29, 1842.

Referred to the Committee on Printing.

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WASHINGTON, June 29, 1842.

SIR: At a late convention of citizens holding claims upon the Government, we were appointed a committee to present to Congress the memorial adopted by the convention, which is herewith enclosed.

We respectfully request you to present it to the Senate of the United States.

Your obedient servants,

RICHD. S. COXE,
F. S. KEY,
J. E. DOW.

Hon. W. P. MANGUM,

President of the Senate of the United States.

THE PUBLIC CLAIMANTS.

MONDAY, June 27, 1842.

The convention of claimants met, pursuant to adjournment, at the City Hall in the city of Washington.

The Hon. Wm. Y. Hansell, of Georgia, took the chair.

Richard S. Coxe, Esq., the chairman of the committee who were appointed to draught a memorial, reported the following:

To the honorable the Senate and House of Representatives of the United States, in Congress assembled:

The memorial of numerous citizens of the United States, having claims upon the Government of the United States, assembled in convention, pursuant to public notice, in the city of Washington,

RESPECTFULLY REPRESENTS:

That, at the convention recently held in the city of Washington by your memorialists, individuals having claims upon the Government from every

Thomas Allen, print.

State and Territory in the Union, assembled for the purpose of deliberation upon matters of common interest to them all, and particularly to unite in bringing their views before the consideration of your honorable bodies.

Your memorialists, and the numerous individuals whose interests on this occasion they represent, have claims arising under express contracts or implied obligations of the Government made in pursuance of the Constitution of the United States, which they believe to be founded in law and justice, and which they are prepared to prove by legal and competent evidence. Many of these claims have been years since presented to the proper departments for decision and payment, and the delays which have occurred in their settlement have not originated in, nor can they be attributed to any want of promptness or diligence on the part of the claimants. In many instances, what might have been considered considerable progress, has been made, reports of committees of Congress have, from time to time, been made in various cases. In not a few instances these reports, recognising the validity of the claims, have been concurred in by one or the other of your honorable bodies; in some cases they have, at different sessions, passed each House, yet it has so happened that, before the bill to provide for them has definitively passed, some untoward circumstance has arisen to dash the cup of hope from the lips of the unfortunate expectant, and he has been compelled, year after year, to renew the presentation of a claim, against which not one well-grounded objection has ever been urged. The calendar of your honorable bodies will show, that, for a series of years, at the adjournment of Congress, there have been a multitude of private bills pending before it, which had gone through all the forms of inquiry and deliberation, and which would have passed into laws without objection or opposition, had the session been prolonged for that purpose but a few days. The unfortunate claimants have thus felt themselves delayed in their efforts to procure sheer justice, and compelled to renew, at each returning session, the expenditure of time and money, the pain of suing for justice by humble solicitation, until their means, their health, and their pride of character, have all become exhausted. The great mass of claimants are men of limited means and unable, without the most serious diminution of their ordinary means of subsistence, upon which their families and themselves are wholly dependant, and an appropriation of that time which is to them not less valuable, to continue these efforts to obtain justice. They can not but regard it as a grievance of a very oppressive kind, that they are compelled to choose between the abandonment of their clearest rights, or to seek an uncertain allowance of them by a tedious and expensive prosecution. Nor can they conceive that it comports with the true interests or the honor of the Government to subject its honest creditors to those wasting delays, and cruel disappointments, which almost uniformly obstruct this mode of administering justice.

To a portion of the members of your honorable bodies, the number and amount of claims of the character we have described, can not but be well known. In consequence of the peculiar nature of our institutions, the pecuniary connexions between the Government and its citizens are necessarily multiplied to an almost incalculable extent, and embrace the transactions of no inconsiderable proportion of the American people.—Nearly the whole of the vast extent of territory acquired by the United States has come into its hands bound by pre-existing obligations to a large extent, and of unquestioned sanctity. These obligations, the Government, in accepting the cession, assumed the duty of discharging, and the national faith is pledged for the faithful execution of

these sacred trusts. In cases where this territory was acquired from foreign nations, from the Indian tribes, or by cession from individual States, the protection and security of private rights have been formally guarantied by the Government. Years have elapsed since these obligations have been assumed, and the numerous applications which are incessantly addressed to Congress by the parties interested, attest that the plighted faith of the nation is yet to be redeemed.

The system which has so long prevailed, of disposing of the public domain, independently of the collisions which it occasions between the new purchasers and the ancient proprietors, is in itself complicated in its details, and from this complexity has originated a multitude of controversies, which the Government is under every obligation to adjust.

The wars in which the country has been engaged, and the treaties and conventions into which it has entered, have been a fruitful source of individual claim upon the Government for indemnification for property appropriated without their consent for public purposes, for means supplied, and services rendered under express contracts, or under circumstances involving the highest equitable obligations to remunerate the injured party. The system which now so universally prevails, and which must grow rapidly with the augmented exigencies and expenditures of the nation, causing so large a portion of their business operations to be performed, and the public supplies to be furnished, through the instrumentality of contracts, has brought the pecuniary concerns of a large portion of our citizens in immediate connexion with the Government. The daily supplies of the army and navy, as well as of the civil departments, the entire business of the Post Office in all its widely-extended and minutely-diversified operations, are effected through the intervention of contracts between the public and private individuals. The interests and rights of the officers and agents by whom this mass of business is conducted, as well as of individual citizens, are thus affected in an infinite variety of ways. It is manifest from these prolific sources, and we have briefly alluded to but a few of the more prominent among them, numerous controversies must hourly arise, against which the utmost vigilance and caution, the most perfect integrity and good faith, can afford no effectual security. In all these contract relations, wherever controversies do arise, every principle of abstract justice and common probity requires that the parties, however they may differ in their proportionate dimensions, should occupy an equal footing, and their respective rights and obligations be measured by the same standard of justice. The terms of the contracts between the parties, and the immutable principles of law and justice, furnish the only rules by which the extent of these rights and these obligations ought to be fixed. In the enforcement of the legal rights of the Government, and the responsibilities of the citizen, the former is clothed with peculiar privileges. The interests of the public have been sedulously watched and carefully guarded by legislative enactments. She has a ready access to her own courts of justice, which are always ready to hear her demands. The transcripts from her treasury accounts are made evidence to support her claims—unless under special circumstances no time is allowed the defendant to prepare his defence, and no offset received unless it shall have been presented for allowance to the appropriate accounting officer, and been by him rejected; in some cases a still more prompt and peremptory remedy is furnished, and the summary process of a warrant of distress issues, without notice and without trial, under which the property and person of the citizen are subjected to immediate execution. The Government

is entitled to a preference in all cases of insolvency, and the public debtor is debarred from those various modes of extricating his person from actual imprisonment, which the humane policy of different legislatures has provided in cases of private demands. Should the Government succeed in the suits which it institutes, the original debt is augmented by heavy bills of costs—while, should the citizen defeat the claim, he is compelled to pay the expenses of successful litigation. These are some of the advantages which the Government enjoys over the citizen, and under institutions the only solid foundations of which are equal justice and common rights, where the very term of prerogative is odious and offensive, where the law is assimilated in theory to the Divinity as being no respecter of persons, they might furnish ample ground for commentary.

The citizen whose claim against the same Government may rest upon the plighted faith of the nation pledged in a treaty—upon a contract made in accordance with express law, upon the constitutional provision that his private property shall not be taken for public use without just compensation; who has sustained injury by a lawless exercise of official power—has no certain or ascertained mode of obtaining justice. The courts of justice are closed against him, for the United States claims a total immunity from the judicial power of enforcing her to do justice. In portions of Europe, the subject of the proudest despot can invoke his sovereign before his own courts, and obtain an adjudication upon his claims before the regular tribunals of justice. From time immemorial, every subject of the English crown has been allowed to sue his monarch by an ordinary judicial proceeding. It is believed that in this country, which alone professes to have for the foundation of its Government a sacred regard to private rights and the principles of equal justice, can be found the solitary example among civilized nations, in which there exists no regular systematic mode of administering justice between the individual citizen and the public.

The Constitution of the United States, in precise and emphatic terms, declares that the judicial power of the United States shall be vested in courts, and that it shall extend to *all cases* in law and equity arising under its own provisions, or those of the treaties and laws of the Union. By what process of reasoning the conclusion has been reached, that the power of construing and enforcing the performance of a treaty stipulation, an act of Congress, or of a written contract, is a judicial power when its exercise is called into act on in controversies between individuals, or is required on behalf of the Government against the citizen, but ceases to be so the instant the citizen has a right against the Government, your memorialists frankly confess that they are unable to comprehend. The same constitution confers upon Congress legislative powers, and none other. It is not less difficult to understand how the construction of treaties, laws, and contracts, the ascertainment of the validity and extent of private rights, founded upon the application of legal principles to the peculiar facts of different cases, the admeasurement of damages resulting from the violation or non-performance of agreements or illegal outrages upon the person and property of individuals, can come within any definition which, either in common parlance or accurate philosophical discussion, has ever been given to legislative power.—The only means the citizen has of obtaining judicial action upon his claims upon the Government, is by retaining possession of public funds, so as to compel the institution of a suit against the alleged delinquent. This remedy, unsatisfactory as it is in all cases, and enjoyed by so small a number as to be objectionable on the

score of its not comprehending all, the party may be deterred from using in cases where such a defence will call in question the correctness of the department by whose volition he holds office.

In the absence, then, of any regularly-constituted tribunal possessing judicial powers, and qualified to investigate and decide the difficult and intricate questions of law and fact which not infrequently arise in cases between claimants and the Government, the citizen has no resource but the Executive Departments and Congress. In regard to the former, the laws under which they exist obviously never contemplated to invest these officers with judicial authority. Independently of the manifest violation of the constitution, which would be involved in the creation of such tribunals of justice, the whole scope of the legislative action upon the subject has a totally different aspect.

The questions which arise even in the ordinary adjustment of treasury accounts, are not infrequently difficult and intricate, both as to law and fact. Satisfactorily to solve many of those which occasionally present themselves, would demand the highest order and greatest variety of juridical attainment, aided by all the machinery which has been found essential in the administration of justice. They involve the most abstruse points of the professional science of jurisprudence, both legal and equitable, and have to encounter the embarrassments which grow out of the conflicting statements as to the facts to which those principles are to be applied. In numerous instances, contracts are made with officers or agents of the Government, without the means of anticipating, and consequently of providing for the varying circumstances which may modify their execution, or prevent, by the one party or the other, their literal performance. The individuals who made the arrangements are not those by whom the subsequently-arising controversies are to be adjusted. Those by whom these matters are to be finally acted upon, were ignorant of the circumstances out of which the contracts grew. Of the contemporaneous views and explanations which passed between the parties, they possess no practical familiarity with the science of law and equity; and, with the best intentions, and the most honest designs, their judgments must frequently be erroneous. In addition to these fruitful sources of embarrassment and error, others exist not less prolific, originating in the limited nature of the jurisdiction conferred upon these officers, and the restricted powers under which they act. It would probably be as unwise as it would clearly be unconstitutional to invest the accounting officers of the Treasury with the comprehensive authority and plenary powers which are found essential to the full and complete administration of justice. Nor is it very easy to define the precise limits which mark the extent of their spheres of action. This very vagueness frequently prevents the officer from doing justice to the individual claimant, and it can not be questioned that opportunities are afforded for the operation of influences which ought not to be permitted to interfere in the exercise of judicial power.

These, and many other causes which might be enumerated, necessarily compel a large mass of claims to be brought before Congress for its decision. It must be obvious to every individual who has had much practical experience in business of this description, and the fact may be distinctly asserted, without incurring a suspicion of designing the slightest disrespect to the legislative department of the country, that theory and observation concur in establishing the fact that it would be difficult to conceive of a more inappropriate tribunal for the full, competent, and faithful administration of justice.

Claimants upon the Government have a right to have their cases thoroughly and impartially investigated, and justly and promptly decided. It is morally and physically impracticable for one tenth part of the members of Congress to give that consideration to one tenth part of the private claims upon which they are required to decide, which, did they occupy the position of judges upon the bench, they would individually feel themselves bound to bestow before passing judgment upon the most inconsiderable cause; and which, were they litigant parties, they would feel that they were authorized to require of judges before deciding upon their rights. In this state of things, it can not be too much to assume, that while, of the large body of either House which is required to pass upon every private claim, many are willing without examining for themselves, to repose confidence in those who have, or profess to have, investigated the subject, others are indisposed to draw large sums of money from the public Treasury, unless satisfied that the appropriation is called for by justice.

It is a matter of notoriety, that, in numerous cases, it is with great difficulty the committees to whom private claims are referred, can be induced or enabled to hold their meetings with regularity, or to find sufficient time when assembled to examine and deliberate upon the cases before them. The different committees have no well-digested and settled rules of proceeding, or principles of decision. In short, your memorialists refer to personal experience of every gentleman, now, and for years past, a member of either of your honorable bodies, to answer the inquiry, not whether all or a majority, but any considerable number of cases of private claims have been examined and understood by a majority of those who have finally voted upon them.

At this period in the history of our country, when retrenchment and reform seem to be so loudly and so generally demanded by the nation, it may not be amiss to advert to this topic. Your memorialists feel warranted in asserting that there are, upon an average, as many cases of a controverted character before a single subordinate branch of one of the Departments, involving as large an amount of property, the interests of as many individuals, and as important questions of law, as there are at the same moment of time pending before the Supreme Court of the nation.—The experience of numerous members of each of your honorable bodies will enable them to affirm another assertion which we submit, that the amount expended by the nation, without including the monstrous expenses of the claimants themselves, in consequence of Congress exercising judicial power in acting upon private claims, largely exceeds the whole amount appropriated to the Judicial Department of the Government, including the pay of judges, attorneys, marshals, jurors, and witnesses.

The procrastination and delay which, under such a system, must necessarily and do frequently occur, are, in themselves, fatally ruinous. Instances are by no means rare in which the citizen has expended his time and his means in the prosecution of demands against which no just exception could be taken, until his life and his purse were both exhausted; and ere he has attained a final decision upon his case he has closed his despairing eyes, the tenant of the alms-house, the lunatic asylum, or the common jail.

It is not our intention, or indeed our province, to do more than to state in brief and general terms the evils of which we conceive we have a right to complain. Should it be impracticable for Congress, at its present session, to organize a system adapted to the case, it will not, we trust, rise without administering a partial relief. If it can devote a brief period to the action of

cases now before it, and institute a thorough inquiry into the actual evils which attend the present system, something will have been effected, and before a committee empowered to make such an inquiry, evidence can be brought calculated to inspire the deepest horror, and to raise a just and general indignation.

Your memorialist can not refrain from suggesting to your honorable bodies certain consequences, which, in our judgment, must necessarily ensue, unless a different system from that which now prevails shall speedily be adopted. The number of claims has increased, and must continue to increase with such rapidity, that ere long, if the entire time of Congress shall be exclusively devoted to their attention, without reference to general legislation, even a perpetual session would not enable it to complete the business. The class of American citizens interested in this subject is now numerically large, and is incessantly augmenting in number; and a wide-spread feeling pervades the land that justice is denied, or so delayed, as to be in its results and consequences worse than a prompt and conclusive denial. Such a conviction, it must be apparent, can not but engender and diffuse, as widely as the cause shall exist, a bitter feeling of hatred for institutions, under the practical operation of which citizens are required to submit to such outrages and such wrongs as the claimants upon the justice of the country are condemned to endure. The animating glow of patriotism, the inspiring love of our institutions, which can alone render our native land and our form of Government perpetual, will be exchanged for sullen hatred, or bitter scorn. Nor can it be expected that honest and honorable men will voluntarily associate themselves in business transactions with a party by which justice is not voluntarily granted, and against which it can not be enforced.

Such a system of policy as that to which we have adverted, which has increased in the weight and pressure of the evil which it inflicts, can not limit and confine those evils to those upon whom they primarily operate. The honest man will contemptuously disdain to engage in contracts with a Government which omits to perform its part of the stipulations, and from which justice is reluctantly wrung, like the last life-drops from the heart, instead of welling in a copious and regular stream from the centre to the extremities, strengthening and invigorating every member with health and life. On the contrary, we must expect to see in full maturity what perhaps is already partially indicated, that men who feel assured that justice will not be done them by the nation, will either cautiously avoid connecting themselves with such a party, or will, in their own way and for their own security, anticipate the injury which they may suffer from an adherence to the rules of probity and honor, and make themselves at least safe by every description of dishonesty and fraud.

In conclusion, we can not but invoke Congress to adopt some system by which the public faith and honor of the nation may be resuscitated and maintained, by which the repudiation of pecuniary obligations, in its worst form, may be arrested and annihilated; by which the great duty of all Governments, especially of those where freedom prevails, the insurance of justice to the citizen may be guarantied, and the sympathies of the people with their political institutions be hallowed and confirmed, by establishing them on the sure foundations of affection, confidence, and respect; by setting the great and honorable example of demonstrating that good faith in the fulfilment of obligations, fidelity in discharging contract engagements, and promptness in

satisfying the demands of justice, constitute the proudest bulwarks and the most enduring basis of a nation's glory and prosperity.

WM. Y. HANSEL, *Chairman.*

GEO. L. THOMPSON, *Secretary.*

Which said memorial, with references, on motion, were unanimously accepted.

The following resolutions were unanimously adopted :

1. *Resolved*, That a committee be appointed to present a copy of the memorial to each House of Congress, and the President of the United States, and if he shall approve of the same, to recommend such measures as he may think proper for the adjustment of claims upon the Government of the United States.

The following persons were nominated and duly appointed : Richard S. Coxe, Francis S. Key, and J. E. Dow, Esqs.

2. *Resolved*, That a committee of five be appointed to be denominated a committee of correspondence, whose duty it shall be to institute a correspondence with claimants in every State in the Union, transmitting the memorial and proceedings of this convention, proposing the meeting of claimants in their respective States, and sending delegates to meet in convention on the second Monday of December next, at the City Hall, in this city, then and there to adopt such measures for the prosecution of their claims as to the said convention may seem fit and proper.

The following persons were duly nominated and appointed : G. L. Thompson, R. W. Meade, J. E. Dow, F. Dickens, and J. N. Burke.

3. *Resolved*, That the proceedings of this meeting be signed by the chairman and secretary of this convention, and published in all the papers in this city.

4. *Resolved*, That this convention adjourn to the second Monday of December next, 5 P. M., to meet at this place.

WM. Y. HANSEL, *Chairman.*

GEO. L. THOMPSON, *Secretary.*

[NOTE. The following extracts from the commentaries of Judges Story and Tucker show the views entertained by those distinguished jurists of the subjects adverted to in this memorial.]

"It has been sometimes thought that this is a serious defect in the organization of the judicial department of the national Government.

"It is not, however, an objection to the constitution itself; but it lies, if at all, against Congress for not having provided (as it is clearly within their constitutional authority to do) an adequate remedy for all private grievances of this sort in the courts of the United States. In this respect there is a marked contrast between the actual right and practice of redress in the national Government as well as in most of the States—the right and practice maintained under the British constitution. In England, if any person has in point of property a just demand upon the king, he may petition him in his court of chancery, when the chancellor will administer right theoretically as a matter of grace, and not upon compulsion, but in fact, as a matter of constitutional duty.

"Congress has never yet acted upon the subject so as to give judicial redress for any non-fulfilment of contracts by the national Government. Cases of the most cruel hardship, and intolerable delay already occurred, in which

meritorious creditors have been reduced to ruin by the tardiness of a justice, which has been yielded only after the humble supplications of many years before the legislature. One can scarcely refrain from uniting in the suggestion of a learned commentator, that in this regard, the constitutions both of the national and State Governments stand in need of some reform to quicken the legislative action in the administration of justice; and that some mode ought to be provided, by which a pecuniary right against a State or against the United States might be ascertained and established by judicial sentence of some court; and when so ascertained and established, the payment might be enforced from the national treasury by an absolute appropriation. Surely it can afford no pleasant source of reflection to an American citizen, proud of his rights and privileges, that in a monarchy the judiciary is clothed with ample powers to give redress to the humblest subject in a matter of private contest or property against the crown, and that in a republic there is another denial of justice in just cases to any citizen through the instrumentality of our judicial process. He may complain, but he can not compel a hearing.

"The republic enjoys a despotic sovereignty to act or refuse as it may please, and is placed beyond the reach of law. The monarch bows to the law, and is compelled to yield his prerogative at the foot-stool of justice."—*Story's Commentary on Constitution.*

"Candor requires a further acknowledgment, that in order to render the judicial power completely efficacious, both in the Federal and State Governments, some mode ought to be provided, by which a pecuniary right, established by the judicial sentence of a court against a State, or against the Government of the United States, may be enforced. It is believed that instances might be adduced, where, although such rights have been judicially established, the claimants have not received any benefit from the judgment in their favor, because the legislature have neglected (perhaps wilfully), to provide a fund, or make the necessary appropriation required by the constitution for the discharge of the debt. In this instance the constitutions both of the Federal and State Governments, seem to stand in need of reform."—*Tucker's Blackstone's Com. App., page 352.*

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